As the sub-tenants have not been served, or heard, the judgment will not be enforceable as against them and a declaration to that effect must be embodied pursuant to Section 26.

As both parties have succeeded in part they should bear their own costs throughout.

Order accordingly.

Solicitors : *Hilborne & Murphy; S. C. Goho & Co.*

V. SOLAI v. MARIAYEE

[O. C. J. (Bellamy J.) October 15, 1954]

[K. L. — Civil Suit No. 20 of 1954]

Guardianship of infant — Procedure — Whether proceedings by way of Originating Summons or Suit — Civil Law Enactment, 1937, s. 6(i) — Guardianship of Infants Acts, 1886 & 1925 — Religion and customs of parties.

The plaintiff, a Hindu father, instituted this suit for an order for the custody of his 2 infant children alleged to be detained by his Hindu wife. A question of procedure arose as to whether proceedings of the kind ought to be taken by way of Originating Summons and not by a Suit.

Held: (1) there being no other written law which applies in the Malay States regarding the religion and customs of parties concerned, the Guardianship of Infants Acts must be followed; (2) the proper procedure where there is no action or other proceedings pending is for an application to be made by Originating Summons in the matter of the infants.

CIVIL SUIT.

Both parties in person.

Cur. Adv. Vult.

Bellamy J. : — This is a suit instituted by a Hindu father for an order for the custody of his two infant children alleged to be detained by the defendant, a Hindu woman, who is the plaintiff's wife and the mother of the children.

A question of procedure (upon which, as far as I am aware, there has been no reported decision in this Court although the question must have arisen before) immediately arises whether proceedings of the kind must be taken by way of originating summons under section 472 of the Federated Malay States Civil Procedure Code and not by a suit.

The answer is, I think, to be found in section 6(i) of the Civil Law Enactment, 1937 which provides :—

"In all cases relating to the custody and control of infants the law to be administered shall be the same as would have been administered in like cases in England at the commencement of this enactment regard being had to the religion and customs of the parties concerned unless in any case other provision is or shall be made by any written law."

There is no other written law which applies in the Malay States, and it follows that English law as it was at the 12th March, 1937, the date of the commencement of the Civil Law Enactment, 1937, applies to such cases.

The relevant English law is to be found in the Guardianship of Infants Acts, 1886 and 1925. Under these Acts applications are made to the Court in the manner laid down by rules made under the Guardianship of Infants Act, 1886 (section 11); and the procedure is governed in the High Court by Order 55, rule 2(12) and Order 55A of the Rules of the Supreme Court. Order 55A admits of any application either under the Act of 1886 or under the Act of 1925 by an originating summons in the matter of the infant where there is no action of other proceeding pending. It does not appear to admit of any such proceeding being taken by a suit.

In my view, therefore, no suit will lie here for the custody of an infant. The proper procedure, where there is no action or other proceedings pending (as in this case), is for an application to be made by originating summons in the matter of the infant. It will be noted that this procedure is in line with the procedure in the Settlements where under the Guardianship of Infants Ordinance (Chapter 50) of the Straits Settlements the procedure is regulated by Order 52, rule 23 of the Rules of the Supreme Court, 1934, clause (1) of which is taken from the English Order 55A, rule 2.

It follows that in my view these proceedings have been misconceived. The suit is dismissed, with costs, without prejudice to any further proceedings which the father might take in proper form.

Suit dismissed.

GNG ENG HWOO v. REGINA

[A. Cr. J. (Whitton J.) October 15, 1954]

[Singapore — Magistrate's Appeal No. 148 of 1954]

Dangerous Drugs Ordinance, 1951, s. 30(7) — Meaning of "owner" — Criminal Procedure Code (Cap. 21), s. 296 — Order — Whether Magistrate's ruling as to ownership within s. 30(7) Dangerous Drugs Ordinance amounts to an order.

In this case the proceedings started with the prosecution of another Chinese for alleged unlawful possession on board the motor sampan of raw opium in contravention of the Dangerous Drugs Ordinance. That Chinese was acquitted but the Magistrate held that an offence under the Ordinance had been committed, and under s. 30(3) asked the owner to show cause why the vessel should not be forfeited. After hearing the evidence of

the appellant and of a witness called by him the Magistrate decided that Tay Koon Tien, who was apparently steering the boat at the time it was stopped by Customs officers, was the owner at the material time within the meaning of s. 30(7) of the Ordinance, and thereupon called him under the same section to show cause. At that point counsel for the appellant gave notice of appeal and the proceedings were adjourned.

Held: (1) in connection with a criminal cause or matter the word "order" is confined to those final decisions of a Court which affect parties to the proceedings in respect of their person or property; (2) in holding that Tay Koon Tien was the owner of the vessel the learned Magistrate did not make anything in the nature of a conclusive order in relation to the vessel. As the Magistrate had not made an order for forfeiture this appeal was premature.

[Editorial Note: Sir John Woodroffe in his **Criminal Procedure in British India** defines "order" as the formal expression of a decision of a Criminal Court not being a judgment of acquittal or conviction.]

MAGISTRATE'S APPEAL.

S. H. D. Elias for the appellant.

J. F. McWilliam (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Whitton J. : — The Notice of Appeal in this case reads :—

"Gng Eng Hwoo who claims to be the owner of Cargo Boat bearing Licence No. SC. 8114 and Plate No. 1703, hereby gives Notice of Appeal against the Order made by the Seventh Police Magistrate on the 3rd day of August, 1954, declaring that one Tay Koon Tien is the owner of the said vessel within the meaning of Section 30(7) of the Dangerous Drugs Ordinance, 1951."

I have set out this Notice of Appeal "in extenso" because, although at the hearing of the appeal argument by both counsel was directed to the substantive merits of the question whether the appellant was the owner of the boat referred to, I have on reflection come to the conclusion the first matter to be decided is whether the so-called order of the Magistrate is appealable at all.

In the lower Court the proceedings started with the prosecution of another Chinese for alleged unlawful possession on board this boat of raw opium in contravention of the Dangerous Drugs Ordinance. That Chinese was acquitted but the Magistrate held an offence under the Ordinance had been committed, and under Section 30(3) asked the owner to show cause why the vessel should not be forfeited. After hearing the evidence of the appellant and of a witness called by him the Magistrate decided that one Tay Koon Tien, who was apparently steering the boat at the time it was stopped by Customs officers, was the owner at the material time within the meaning of the Ordinance, and thereupon called upon him under the same section to show cause. At that point Mr. Elias gave notice of Appeal on behalf of the appellant and the proceedings were adjourned.

Now Section 296 of the Criminal Procedure Code reads :—

"296. — (1) No appeal shall lie from a judgment sentence or order of a criminal Court except as provided for by this Code or by any other law for the time being in force.

(2) No appeal shall lie from a judgment, sentence or order of a Police Court in any of the cases specified in Schedule C."

It is clear then no appeal can lie unless the Magistrate in, to quote his own words, finding Tay Koon Tien was the owner as defined in Section 30(7) at the material time made an order within the meaning of Section 296. I have been unable to find any definition of the word "order" which appears to fit its use in this section, but my research into the matter has led me to the conclusion that in connection with a criminal cause or matter the word is confined, broadly speaking, to those final decisions of a Court which affect parties to the proceedings in respect of their person or property. Now in holding Tay Koon Tien to be the owner of the boat the learned Magistrate did not in my view make anything in the nature of a conclusive order in relation to the boat. Had the case proceeded to a normal end and the Magistrate then made an order of forfeiture it would be open, to the appellant to appeal as a person coming within the scope of Section 30(2). But in such circumstances were the Magistrate not to make an order for forfeiture I do not think for one moment it could be successfully maintained that the Magistrate's ruling as to ownership based on the highly artificial meaning given to the word "owner" in Section 30(7) of the Dangerous Drugs Ordinance had affected the legal title in the vessel which existed before the proceedings were instituted in the Magistrate's court.

For these reasons I agree with the learned Magistrate in considering this appeal was premature, and the appeal is dismissed.

Appeal dismissed.

Solicitors for the appellant : *Elias Bros.*

Re LIM SEE QUEE, Decd.; LIM CHIANH FOOK v. TAN AH CHOOT (w) & ORS.

[O. C. J. (Whitton J.) November 2, 1954]

[Singapore — Suit No. 327 of 1950]

Will — Forfeiture clause — Validity and operation of.

This was a summons for directions as to whether in the events that had happened the plaintiff, who is a son of the testator, had forfeited his share under the Will of the deceased. Clause 25 of the Will reads as follows: "I declare that if any beneficiary hereunder shall become